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OFFICE OF PETITIONS

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Monterey, CA 93942

In re Application of
Leung, et al.
Application No. 09/811,834
Filed: March 16, 2001
Attorney Docket No. P1283
For: REFLECTOR ASSEMBLIES FOR
OPTICAL CROSS-CONNECT SWITCHES
AND SWITCHES FABRICATED
THEREFROM

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: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)
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This is in response to the petition under 37 CFR 1.47(a) filed August 2, 2001.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed March 16, 2001 without an executed oath or declaration and naming Chak Leung, Kent Leung, Dar-Qwei(David) Fuh, Stanley Yu, and Howie Trang as the joint inventors.

Accordingly, on May 31, 2001, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration, and a surcharge for its late filing.

The instant petition was filed was in response.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

Petitioner lacks items (1) and (2).

As to item (1), the petition lacks any supporting evidence that non-signing inventor was ever presented with a copy of the application papers (specification, claims and drawings), or, having been presented with the application papers, refuses

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to sign the oath or declaration. Petitioner must establish that the application papers were sent to the non-signing inventor at the inventor's last known address and that the inventor refuses to sign the oath or declaration after having been presented with the application papers.

Proof of the pertinent events should be made by someone having first hand knowledge of the events in the form of a declaration or affidavit. In particular, the declaration or affidavit must set forth the manner in which the application papers were presented to the non-signing inventor. Petitioner should include copies of dated cover letters and/or mailing receipts as evidence that the non-signing inventor was presented with a copy of the application papers, or, having been presented with the application papers, refused to sign the oath or declaration.

Petitioner is reminded that before a refusal to sign an oath or declaration can be alleged, it must be demonstrated that a *bona fide* attempt has been made to present the application papers (specification, claims, and drawings) to the non-signing inventor. The evidence submitted by petitioner has only established that the inventor was sent a copy of an assignment agreement and a declaration.

A copy of the application papers (specification, claims, and drawings) should be sent to the non-signing inventor at the non-signing inventor's last known address, or, if the non-signing inventor is represented by counsel, to the address of the non-signing inventor's attorney. Petitioner's attention is directed to MPEP 409.03(d) for further guidance.

As to item (2), the declaration submitted with the instant petition is not acceptable as it does not appear to be complete. The declaration, consisting of two (2) pages, does not include the name, citizenship, and address of non-signing inventor Trang.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn.: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision may be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.


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Supervisory Petitions Examiner
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for Patent Examination Policy